Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Conference	)	WC Docket No. 02-269
On Accounting Issues	)	
	)	
2000 Biennial Regulatory Review -	)	CC Docket No. 00-199
Comprehensive Review of the Accounting	)	
Requirements and ARMIS Reporting	)	
Requirements for Incumbent Local	)	
Exchange Carriers: Phase II	)	
	)	
Jurisdictional Separations Reform and	)	CC Docket No. 80-286
Referral to the Federal-State Joint Board	)	
	)	
Local Competition and Broadband Reporting	)	CC Docket No. 99-301

COMMENTS OF QWEST

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SUMMARY

The Joint Conference Report is nothing more than a wish list of state regulators' accounting and financial reporting interests and desires. It is of no assistance in addressing the question of what accounting and reporting requirements are "necessary" for the Commission to fulfill its regulatory responsibilities under the Act. Therefore, the Commission should reject the Report's recommendations and initiate a new proceeding to take a "fresh look" at the Commission's existing accounting and reporting requirements rather than try to "fix" the 2000 Biennial Regulatory Review.

To comply with Section 11(b), the Commission must develop a reasonable standard for determining what accounting and reporting requirements are "necessary in the public interest." While the Commission has been reluctant to directly address this issue in its biennial review, it must do so if it is to fulfill its obligations under Section 11. In arriving at a regulatory interpretation of the word "necessary," it is imperative that the Commission use its reasoned judgment to develop a meaning that is consistent with Congressional intent. The Commission cannot simply apply a "used" or "useful" criterion to justify the continuation of existing accounting regulation under the "necessary" requirement of Section 11(b).

Qwest does not believe that it would be a proper construction of the "necessary" language in Section 11 to apply it to "needs" that are unique to the states. Moreover, even if the Commission were to accept the premise that the "necessary" test could be based on state rather than federal needs, a state advocating that the Commission adopt such state-specific accounting and reporting requirements would need to demonstrate, on an individual basis, that the state's information need satisfied Section 11's federal "necessary" test. To date neither the Joint Conference nor any other participant in the Commission's Biennial Regulatory Review has even

attempted to demonstrate how Section 11's "necessary" test could apply in a state regulatory context. Furthermore, those that contend that the Commission's accounting rules should be continued or expanded to meet states' needs assume a level of conformity among the states that simply does not exist. Each state has a unique regulatory environment, in addition to unique geography, network deployment, climate and market. States have pointed to this uniqueness for years in supporting their jurisdiction over intrastate communications.

The Joint Conference recommendations, if accepted, would "turn back the clock" on the Commission's accounting simplification and regulatory reform efforts. The Joint Conference's recommendations basically ignore the Congressional mandate contained in Section 11 of the Act and focus almost exclusively on states' needs. For this reason alone, the Joint Conference's recommendations should be rejected.

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COMMENTS OF QWEST

Qwest Corporation ("Qwest")[1] submits these comments in response to the Federal Communications Commission's ("Commission" or "FCC") Notice of Proposed Rulemaking ("*Notice*" or "*NPRM*")[2] requesting comment on the recommendations of the Federal-State Joint Conference on Accounting Issues ("Joint Conference") which were submitted to the Commission on October 9, 2003.[3] It is Qwest's position that the Commission should reject the Joint

[1] Qwest Corporation is a wholly-owned subsidiary of Qwest Communications International Inc. and is an incumbent local exchange carrier ("ILEC") subject to the full range of the Commission's accounting and ARMIS requirements under Part 32.

[2] *In the Matter of Federal-State Joint Conference On Accounting Issues; 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Report Requirements for Incumbent Local Exchange Carriers; Phase II; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, WC Docket No. 02-269, CC Docket No. 00-199, CC Docket No. 80-286, CC Docket No. 99-301, *Notice of Proposed Rulemaking*, FCC 03-326, rel. Dec. 23, 2003.

[3] *See* Letter from Federal-State Joint Conference on Accounting Issues to Marlene H. Dortch, Secretary, FCC, dated Oct. 9, 2003.

Conference's recommendations and open a new proceeding at the earliest possible date to eliminate "unnecessary" accounting and reporting requirements.

I. INTRODUCTION

On September 5, 2002, pursuant to Section 410(b) of the Act, the Commission issued an Order "conven[ing] a Federal-State Joint Conference on Accounting Issues to provide a forum for ongoing dialogue between the Commission and the states in order to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough."[4] The Commission convened the Joint Conference in response to a NARUC resolution[5] and to consider more fully the views of state commissions in light of the Commission's Biennial Review (under Section 11 of the Act) of its accounting and reporting requirements. However, the Commission noted in its *Order* convening the Joint Conference that the Commission remains free to take whatever "independent action" it deems necessary concerning regulatory accounting and reporting requirements.[6] Thus, the Commission is under no obligation to adopt any of the Joint Conference's recommendations that are the subject of this *NPRM*.

The Joint Conference Report barely mentions Section 11 of the Act other than to assert that the Commission should not "define the public interest standard in Section 11" from the perspective of federal needs.[7] Ironically, the Joint Conference Report then goes on to focus almost exclusively on states' needs. While the Report observes that the states are free to

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[4] *In the Matter of Federal-State Joint Conference on Accounting Issues*, *Order*, 17 FCC Rcd 17025 ¶ 1 (2002) ("*Convening Order*").

[5] *Resolution Seeking Termination of the Federal Communications Commission's Further Notice of Proposed Rulemaking in CC Docket No. 00-199, 2000 Biennial Regulatory Review, and the Establishment of a Federal-State Joint Conference*, Sponsored by the Committee on Finance and Technology, adopted by the NARUC Board of Directors on July 31, 2002.

[6] *Convening Order*, 17 FCC Rcd at 17027 ¶ 7.

[7] Joint Conference Report at 6-7.

prescribe their own accounting requirements,[8] it urges the Commission to adopt accounting requirements that states may find useful.

Qwest strongly opposes such an approach to promulgating federal accounting and reporting requirements. Not only would such an approach violate the dictates of Section 11,[9] it would burden a small number of carriers, the large ILECs, with costly and unnecessary accounting and reporting requirements simply to provide state commissions with information that they may find to be of interest.[10] The Commission should limit its review of accounting and reporting requirements to "federal needs" until such time that Congress passes legislation empowering the Commission to adopt a single set of requirements for all jurisdictions.

Despite its good intentions, the Joint Conference Report serves no worthwhile purpose since it all but ignores Section 11's requirements and focuses on states' needs. The Joint Conference should be disbanded[11] and the Commission should expediously rule on all outstanding petitions for reconsiderations in the 2000 Biennial Regulatory Review and move on

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[8] *See id.* at 7 citing *Louisiana PSC v. FCC*, 476 U.S. 355 (1986).

[9] Section 11 of the Act contains two sections. The first directs the Commission to review all existing regulations and "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." The second section requires that the "Commission shall repeal or modify any regulation it determines to be no longer necessary in the public interest." 47 U.S.C. § 161.

[10] The Joint Conference observes that "It is also more burdensome to require fifty or more potentially different accounting requirements as opposed to collecting data on a national level." (Joint Conference Report at 8.) Qwest agrees with this statement and would gladly trade the 15 different sets of accounting and reporting requirements (*i.e.*, for the FCC and 14 state regulatory commissions) that it must comply with for a single reasonable set of requirements -- but that will never happen. From the states' perspective, a uniform set of national requirements will never satisfy their individual needs (or desires) and additional accounts/information will always be required. Therefore, setting aside the question of whether the Commission has the authority to adopt accounting requirements that meet the needs of the states, it is simply bad policy to expand federal accounting and reporting requirements to meet states' needs when the states have the authority to prescribe their own requirements (and do so with regularity).

[11] In its *Convening Order* the Commission indicated that it would "revisit the need for and utility of the Joint Conference in two years time." *See Convening Order*, 17 FCC Rcd at 17027 ¶ 6.

to the next biennial review. Qwest suggests this approach -- not because it is satisfied with the outcome of the current proceeding, it is not -- but because Qwest believes that the current proceeding has gotten "off track" and lost sight of Section 11's requirements. In the comments that follow Qwest addresses this issue along with other issues raised in the Commission's *Notice*.

II. THE COMMISSION MUST TAKE A "FRESH LOOK" AT ITS ACCOUNTING AND REPORTING REQUIREMENTS IF IT IS TO COMPLY WITH SECTION 11(b)'s MANDATE

Rather than try to "fix" the 2000 Biennial Regulatory Review, the Commission should open a new biennial review proceeding and take a "fresh look" at all existing accounting and reporting requirements. If the Commission is to give proper deference to Congress and comply with Section 11, it must take a 'fresh look" at its accounting and reporting requirements to determine which regulations are "necessary" in today's competitive environment. To comply with Section 11(b), the Commission must develop a reasonable standard for determining what accounting and reporting requirements are "necessary in the public interest."[12]

As a first step, the Commission should devote its energies to developing a workable standard for determining the minimum set of accounting and reporting requirements that is necessary to perform its statutory duties.[13] Then, this standard should be applied to the Commission's existing accounting and reporting requirements to derive the minimum set of requirements. Next, the Commission should examine other federal accounting and financial reporting requirements (*e.g.*, Securities Exchange Commission ("SEC")) to see if these requirements can be used in lieu of separate Commission requirements.[14] If they can, the

[12] *See* note 9, *supra*.

[13] Also, the Commission should clarify that the role of a Section 11 biennial review is to eliminate unnecessary accounting and reporting requirements, not to increase these requirements.

[14] For example, Congress recently expanded the SEC's authority over GAAP financial statements to ensure that companies provide accurate information to the public. (*See* Sarbanes-Oxley Act of

Commission's existing requirements should be reduced to reflect the use of these alternative sources of information. The net result should be the absolute minimum set of accounting and reporting requirements that is "necessary" for the Commission to perform its statutory duties under the Act.

Qwest is of the opinion that the results of such an effort would be a significant downsizing and streamlining of the existing ILEC accounting and reporting requirements with little if any loss of regulatory efficiency. Only after a minimum set of requirements has been identified should the Commission consider retaining any other existing requirements. Furthermore, the Commission should not adopt any additional requirements beyond this minimum set unless it finds a compelling public interest reason to do so.[15]

III. IN ORDER TO COMPLY WITH SECTION 11 OF THE ACT THE COMMISSION MUST FIRST ESTABLISH A STANDARD TO DETERMINE WHICH ACCOUNTING AND REPORTING REQUIREMENTS ARE NECESSARY

The key issue facing the Commission in fulfilling its responsibilities under Section 11 and performing the aforementioned analysis is to determine what is meant by the term "necessary." While Qwest acknowledges that the Commission has attempted to define the term "necessary" with respect to section 251, it is also clear that the Commission's expansive definition was not well-received by the U.S. Supreme Court or the District of Columbia Court of

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2002, Pub. L. No. 107-204, 116 Stat. 745 (107th Cong.)). This should provide the Commission with additional information and reduce the Commission's need for carrier-specific reporting and accounting requirements.

[15] Such an approach rightfully places the burden of justifying any ILEC accounting and reporting requirements beyond the minimum on either Commission staff or other parties advocating these requirements. The burden of proof should not be placed on the regulated party (*i.e.*, the ILECs), as has traditionally been done, to prove that existing requirements are unnecessary. Even if such an approach was justified in the past, it surely is not now with the passage of Section 11 which directs the Commission to eliminate "unnecessary regulation."

Appeals.[16] As such, it would be inappropriate for the Commission to adopt an expansive definition of the term "necessary" for Section 11 purposes.[17] Clearly, Congress did not use the word "necessary" in Section 11 of the Act as a means of granting the Commission authority to retain all existing rules that it might find "useful." There should be no question that Congress intended that there be fewer, more streamlined rules after the Commission conducted a Section 11 biennial review -- and that all rules not actually "necessary" for the Commission to fulfill its statutory responsibilities should be eliminated.

The term "necessary" in Section 11(b) continues to cause controversy because the Commission is constrained by Section 11 to eliminate or modify all rules that are not "necessary in the public interest." While the Commission has been reluctant to directly address this issue in its biennial review of its accounting and reporting requirements, it must do so if it is to fulfill its obligations under Section 11.[18] In prior rounds of comments, some parties have contended that the word "necessary" should be interpreted to mean "useful" rather than "essential" or "indispensable," its common meaning.[19] The Commission should reject using any such expansive definitions. The use of the term "necessary" in Section 11 carries a mandate that goes

[16] *See* Supreme Court review of 8th Circuit's *Iowa Utilities Board Decision*, 525 U.S. 366 (1999) and the D.C. Circuit's Collocation Decision, *GTE Service Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000).

[17] A standard rule of statutory construction holds that Congress is assumed to attach the same meaning to the same word throughout a statute. (*See* Karl N. Llewellyn, Remarks on the Theory of Appellate Decision and Rules or Canons About how Statutes Are to Be Construed, reprinted in 2A, Norman J. Singer, Statutes and Statutory Construction 539, 544 (5th Ed. 1992)).

[18] Commissioner Martin has expressed his concern over how the Commission has addressed this issue in other contexts. "I believe the term 'necessary' should be read in accordance with its plain meaning, to mean something closer to 'essential.'" *See* Consolidated Separate Statement of Commissioner Kevin J. Martin, Approving in Part and Concurring in Part, *In the Matter of Year 2000 Biennial Regulatory Review - Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services, Report and Order*, 17 FCC Rcd 18401, 18466 (2002).

[19] *See* Webster's Ninth New Collegiate Dictionary: an indispensable item: ESSENTIAL.

far beyond the meaning of the term "useful" and requires that the Commission limit its regulations to those that are "necessary in the public interest."

It is Qwest's opinion that Section 11(b) requires that information provided by an accounting or reporting requirement be directly used to regulate affected companies and that such regulation is required to protect the public interest. A requirement would not be deemed "necessary" under this definition if the information is merely helpful or of general interest to regulators. Similarly, if an accounting or reporting requirement was the product of another era (*e.g.*, when the ILECs were true monopolists subject to rate of return regulation) and the information is no longer directly used to regulate the provision of ILEC services in today's environment, it would not be a "necessary" requirement and should be eliminated.[20]

The statutory requirement that a particular rule be "necessary" appears elsewhere in the 1996 Act. Under Section 251, the Commission must find a proprietary network element to be "necessary" before requiring that it be unbundled as a network element.[21] Similarly, collocation must be "necessary for interconnection or access to unbundled network elements" as a prerequisite to ordering physical collocation.[22] While courts have agreed that the term "necessary" is ambiguous for purposes of statutory interpretation, they have rejected efforts to permit definition of the term as connoting nothing stronger than "useful."[23] In arriving at a regulatory interpretation of the word "necessary," it is imperative that the Commission use its

[20] A good example of such a requirement are the Commission's rules governing depreciation expense which are no longer used in establishing rates for interstate services under price cap regulation.

[21] 47 U.S.C. § 251(d)(2)(A).

[22] 47 U.S.C. § 251(c)(6).

[23] *See GTE Service Corporation v. FCC*, 205 F.3d 416, 421 (D.C. Cir. 2000).

reasoned judgment to develop a meaning that is consistent with Congressional intent.[24] Congressional intent requires that "necessary" be read as a powerful deregulatory mandate wherever competitive market forces so dictate. The Commission cannot simply apply a "used" or "useful" criterion to justify the continuation of an existing accounting regulation under the "necessary" requirement of Section 11(b).[25]

One of the key purposes of the 1996 Act was to bring about as much deregulation in the telecommunications sector as was feasible based on the extent of competition -- an evaluation that the Commission is required to undertake every two years in order that the actual state of competition can be examined on a current basis.[26] In this context, Congress' clear purpose in passing the 1996 Act was to bring about deregulation of telecommunications and cable services and to create a regulatory landscape in which only those regulations that actually furthered the Commission's ability to regulate in the public interest were retained.[27]

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[24] *See, e.g., WorldCom, Inc. v. FCC*, 288 F.3d 429, 432 (D.C. Cir. 2002), *mot. granted, request granted, reh'g en banc denied* (D.C. Cir. Sept. 24, 2002 and Sept. 25, 2002), *pet. for cert.* filed (Dec. 23, 2002); *Bell Atlantic Tel. Cos. v. FCC,* 206 F.3d 1, 3 (D.C. Cir. 2000).

[25] Courts have twice rejected such an interpretation of the same word in other sections of the Act, (*AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 388 (1999); *GTE Service Corporation*, 205 F.3d 416, 422 (D.C. Cir. 2002)) and there is no reason to conclude that adoption of such a criterion would fare any better on judicial review. (*See AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 388 (1999); *GTE Service Corporation*, 205 F.3d at 422-24; *Verizon Telephone Companies v. FCC*, 292 F.3d 903, 905 (D.C. Cir. 2002)). As such, it would be imprudent at best for the FCC to take action under the new Act that could be read as flying in the face of at least two clear judicial directives.

[26] 47 U.S.C. § 161(a).

[27] The touchstone of this requirement was the advent of "meaningful competition" in the marketplace. The use of the phrase "meaningful competition" in Section 11(b) coincides with Qwest's main point on this issue. The FCC's accounting and reporting rules should primarily target the extent, scope and impact of "meaningful competition." It is for this reason that accounting and reporting rules that do not apply to the entire industry have little hope of passing the "necessary" test of Section 11(b).

The term "necessary" in Section 11 connotes Congressional intent that the FCC will eliminate all regulations, including accounting and reporting rules, that are not demonstrably a vital part of the structure that permits the Commission to carry out its statutory duties in a reasonable and efficient manner. "Necessary" in the context of the Act implies that the Commission will not presume that any regulation should be retained simply on the basis that it is already on the books. If a particular accounting or reporting rule cannot pass this test, it must be eliminated.

IV. QWEST PREVIOUSLY PROFFERED A SIMPLE TWO-PART TEST TO DETERMINE WHETHER AN ACCOUNTING OR REPORTING REQUIREMENT IS "NECESSARY"

In Qwest's February 13, 2001 comments in Phase 3 of the FCC's comprehensive review of accounting and reporting requirements under Section 11 of the 1996 Act and in its February 19, 2003 reply comments on the Federal-State Joint Conference's Notice on Accounting Issues, Qwest set forth a straightforward methodology that could be applied to determine which accounting and reporting rules are "necessary" under Section 11.[28] This methodology employs two steps. In the first step, the Commission would assess the relevance of the information to its regulatory goals. In the second step, it would analyze alternative (and less burdensome) means of obtaining the same or similar information -- retaining a requirement only if more efficient and less burdensome alternatives were not available. Qwest's proposal, updated to recognize the increasing importance of focusing the Commission's regulatory efforts on competition in the telecommunications marketplace, can be summarized as follows:

[28] Comments of Qwest Corporation, CC Docket No. 00-199, filed Feb. 13, 2001 at 5-7; Qwest Reply Comments, WC Docket No. 02-269, filed Feb. 19, 2003 at 7-8.

Step 1 – Relevance

- Is the information part of an industry-wide evaluation of competition and competitive market forces in the telecommunications industry?[29]

- Is the information required to regulate ILECs in a price cap/CALLS environment?

- Is the information required to discharge the FCC's obligation to ensure adequate Universal Service Fund support?

- Is the information required to protect consumers from cross-subsidies?[30]

To the extent that information is relevant, there should be a presumption in favor of collection from all industry participants, not just the large ILECs. Otherwise the Commission cannot fulfill its obligation under Section 11 to determine whether the information is necessary for regulation "as a result of meaningful economic competition between providers." Without information for all providers, the Commission cannot possibly make the reasoned decisions required by the Act.

Step 2 – Alternate availability

If the answer to any one of the first set of questions is in the affirmative, the Commission then must ask and answer the following questions:

- Is the information or a reasonable proxy already being reported to or compiled at the direction of another federal agency or reliable source?

- If the information is needed and a reasonable proxy is not available from other sources, is the information required to be formatted/compiled/reported on a regular basis or is it sufficient to put ILECs on notice that they must be prepared to provide the data on request?

[29] This information should be the most critical part of the Commission's information collection efforts.

[30] As is noted below, Qwest is of the opinion that special regulatory accounting rules are not necessary for the detection and prevention of cross-subsidization, particularly under price cap regulation. Nevertheless, especially given the statutory prohibition against cross-subsidization, 47 U.S.C. § 254(k), Qwest agrees that it is reasonable and valid for the FCC to assess whether a particular accounting rule protects consumers from cross-subsidization.

- If the information is required at regular intervals or upon request, what is the minimal level of detail (*i.e.*, the highest level of aggregation) required for the FCC to perform its duties?

- What alternative sources of information can be used that are less burdensome on carriers subject to the rules?

- How can the information request be structured in order that it can be collected in the least intrusive manner from the entire industry?

The application of this two-part test to the Commission's existing accounting and reporting regulations should result in the development of a minimal set of accounting and reporting requirements that would satisfy Section 11's mandate.[31] As such, the Commission could obtain the information it needs to regulate in the public interest and the accounting and reporting rules would be no more intrusive than "necessary" to accomplish this purpose.

V. THE COMMISSION'S AUTHORITY TO ADOPT ACCOUNTING AND REPORTING REQUIREMENTS TO MEET THE NEEDS OF STATE REGULATORS IS QUITE LIMITED

Section 11 of the Act is focused primarily on the national "public interest" as overseen by the Commission. State regulatory use of accounting rules imposed by the Commission is not sufficient to meet the "necessary" test of Section 11. Most states that desire accounting information that differs from that reported to the SEC or retained pursuant to Generally Accepted Accounting Practices ("GAAP") or any special accounting rules that the Commission may adopt for its own needs (consistent with Section 11) have the power to obtain this information from carriers subject to their (the states') jurisdiction. Moreover, even if the Commission were to accept the premise that the "necessary" test could be based on state rather than federal needs, a state advocating that the Commission adopt such state-specific accounting and reporting

[31] If the Commission declines to adopt a clear-cut standard or test for determining "regulatory necessity," the burden of proof should shift to those advocating retention of existing requirements once ILECs have made a *prima facie* showing that a requirement is unnecessary.

requirements would need to demonstrate, on an individual basis, that the state's information need satisfied Section 11's federal "necessary" test.[32] The likelihood that such a showing could be made is slim and to date neither the Joint Conference nor any other participant in the Commission's Biennial Regulatory Review has even attempted to demonstrate how Section 11's necessary test could apply in a state regulatory context.

Qwest does not deny the importance of the availability of uniform information to all regulators. Information from GAAP accounting and SEC reporting will continue to be available to state regulators as well as federal reports that satisfy Section 11's "necessary" standard. The question then is whether it would be lawful under Section 11(b) for the Commission to adopt state-desired accounting and reporting requirements that are not needed by the Commission to fulfill its own regulatory responsibilities. Qwest does not believe that it would be a proper construction of the "necessary" language in Section 11 to apply it to "needs" that are unique to the states.

Furthermore, those that contend that the Commission's accounting rules should be continued or expanded to meet states' needs assume a level of conformity among the states that simply does not exist. Beyond the uniformity of GAAP, SEC reporting, and the Commission's rules, comparisons of telecommunications carriers between states are generally not relevant and often misleading. Each state has a unique regulatory environment, in addition to unique geography, network deployment, climate and market. States have pointed to this uniqueness for

[32] This would lead to the anomalous practice of the Commission evaluating the *bona fides* of a state's "need" for a particular federal accounting or reporting rule. Qwest submits that this is not an exercise that the Commission would want to undertake even if it were permitted to do so under the 1996 Act -- which it is not.

years in supporting their jurisdiction over intrastate communications.[33] As such, a state need, absent a federal need, does not satisfy the requirements of Section 11.

VI. MOST, IF NOT ALL, OF THE COMMISSION'S ACCOUNTING NEEDS CAN BE SATISFIED WITH GAAP ACCOUNTING

It should be recognized that even in the absence of any Commission-mandated accounting standards, Qwest's accounting practices will be subject to significant regulation and structure under GAAP.[34] Moreover, under Section 11 and the test that Qwest articulated in Section IV, herein, the Commission must find that GAAP accounting will not permit the Commission to perform its statutory duties before the Commission's existing accounting requirements can be retained.

Additional accounting requirements including the use of the Uniform System of Accounts ("USOA") can be justified only when GAAP accounting is not sufficient to meet the Commission's regulatory needs. Thus, rather than simply reviewing the need for individual USOA accounts, the Commission should ask itself in its next biennial review whether the USOA is "necessary" given the existence of GAAP accounting. As noted in Section IV above, the fact that the Commission may find USOA accounting to be "necessary" is insufficient under Section 11 to justify its retention. The Commission also must find that USOA is "necessary" in light of the availability of GAAP accounting data from SEC filings. To justify a rule requiring the use of

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[33] *See, e.g., In the Matter of Federal-State Joint Board on Universal service, Report and Order*, 12 FCC Rcd 8776, 8842 ¶ 118 (1997).

[34] This is particularly true since the passage of the Sarbanes-Oxley Act. This Act expanded the SEC's authority and provides significant incentives for corporations and their officers to maintain and file accurate information with the SEC. Sarbanes-Oxley dramatically increases the penalties for filing false information with the SEC and imposes specific reporting responsibilities on accountants, attorneys and others that might become aware of corporate wrongdoing. Moreover, these requirements apply to all telecommunications service providers (that are publicly traded), not just to large ILECs. *See* Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745.

a unique accounting system (*i.e.*, USOA) under Section 11 of the Act, the Commission must find that information available through GAAP accounting (or other non-FCC sources) is insufficient to meet the Commission's regulatory needs for information.[35] The burden on the Commission to justify the use of a separate accounting system such as the USOA is all the greater when the requirement only applies to a small segment of the industry, the large ILECs.[36]

Most of the Commission's existing accounting and reporting requirements that apply to Qwest and other large ILECs are the result of ongoing regulatory practices, past regulatory needs, and inertia. This may have been acceptable prior to the passage of the 1996 Act; but it is not now. In Section 11 of the Act, Congress directed the Commission to review its rules every two years and to repeal or modify any rule that is no longer necessary. Qwest urges the Commission in its next biennial review to closely examine the requirement that large ILECs use the USOA to determine if it is truly "necessary," given the existence of GAAP accounting.

VII. THE COMMISSION SHOULD REJECT THE JOINT CONFERENCE'S SPECIFIC RECOMMENDATIONS

The Joint Conference's recommendations, if accepted, would "turn back the clock" on the Commission's accounting simplification and regulatory reform efforts. Rather than assisting the Commission in determining which accounting rules are "necessary," the Joint Conference recommends, with few exceptions, that the Commission reverse its Phase 2 relief and re-impose virtually all prior accounting and reporting requirements on the large ILECs. The Joint

[35] The fact that the Commission might have a need for particular information under some circumstances is not by itself sufficient justification for requiring separate accounting to track the information. Unless collection or review of the information requires unique accounting in order to be accurate, it would be all but impossible to justify such an accounting requirement under any reasonable interpretation of the standard that Congress established in Section 11 of the Act.

[36] At a minimum, the Commission should review the impact of the Sarbanes-Oxley Act to determine how it might benefit the Commission by eliminating the need for the Commission to collect carrier-specific information from a small number of carriers (*i.e.*, the large ILECs).

Conference's recommendations basically ignore the Congressional mandate contained in Section 11 of the Act and focus on state needs. For this reason alone, the Joint Conference's recommendations should be rejected.

Furthermore, the Joint Conference appears to be pursuing a "more is better" approach to accounting regulation regardless of the cost or burden placed on the small group of carriers subject to regulation. As such, no purpose would be served by commenting on the Joint Conference's individual recommendations. The Commission should reject these recommendations and rule expeditiously on all outstanding petitions for reconsideration of its *Phase 2 Order*. Then, at the earliest possible date, the Commission should initiate a new biennial review to determine which accounting and reporting requirements should be retained under Section 11's "necessary" standard.

VIII. IMPLEMENTATION OF PREVIOUSLY DELAYED PHASE 2 ACCOUNTING CHANGES

Qwest does not object to delaying further the implementation of certain Phase 2 accounting changes until January 1, 2005. As the Commission noted in its *Notice*, such a delay would coincide with the start of the fiscal years for affected ILECs. More importantly, this extension also should allow the Commission additional time to consider whether these Phase 2 modifications are "necessary in the public interest." Qwest seriously doubts that the requirements that large ILECs create new wholesale and retail subaccounts (in Account 6620) and report revised "Loop Sheath Kilometer" data would satisfy Section 11's "necessary" standard.

IX. CONCLUSION

Section 11 of the Act requires the Commission to repeal or modify any accounting or reporting regulation that it no longer finds to be "necessary in the public interest." The Joint

Conference Report only acknowledges Section 11's requirements in passing -- and then only to urge the Commission not to limit itself to considering federal needs. The Joint Conference Report is nothing more than a wish list of state regulators' accounting and financial reporting interests and desires. It is of no assistance in addressing the question of what accounting and reporting requirements are "necessary" for the Commission to fulfill its regulatory responsibilities under the Act. Therefore, the Commission should reject the Report's recommendations and initiate a new proceeding to take a "fresh look" at the Commission's existing accounting and reporting requirements.

Respectfully submitted,

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January 30, 2004

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST** to be 1) filed with the FCC via its Electronic Comment Filing System in WC Docket No. 02-269, CC Docket No. 00-199, CC Docket No. 80-286 and CC Docket No. 99-301, 2) served, via email on Tamara Preiss, Chief, Pricing Policy Division at tamara.preiss@fcc.gov, and 3) served, via email on the FCC's duplicating contractor Qualex International, Inc. at qualex.int@aol.com.

Richard Grozier
Richard Grozier

January 30, 2004